

1 Marc J. Randazza, Esq., NV Bar #12265  
2 Ronald D. Green, Esq., NV Bar #7360  
3 Randazza Legal Group  
4 6525 W. Warm Springs Rd., Suite 100  
5 Las Vegas, NV 89118  
6 (888) 667-1113  
7 (305) 437-7662 fax  
8 [mjr@randazza.com](mailto:mjr@randazza.com); [rdg@randazza.com](mailto:rdg@randazza.com)

9 Attorneys for Plaintiff,  
10 Liberty Media Holdings, LLC

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 LIBERTY MEDIA HOLDINGS, LLC

14 Plaintiff,

15 vs.

16 SERGEJ LETYAGIN d/b/a  
17 SUNPORNO.COM, IDEAL CONSULT,  
18 LTD., "ADVERT", "CASTA",  
19 "TRIKSTER", "WORKER", "LIKIS",  
20 "TESTER" and DOES 1-50

21 Defendants

Case No. 12-cv-00923-LRH-GWF

**OPPOSITION TO MOTION TO DISMISS  
FOR LACK OF PERSONAL  
JURISDICTION**

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1 Plaintiff Liberty Media Holdings (Liberty) brought suit against foreign defendants in this  
2 district, under 28 U.S.C. § 1391 (d), which provides that a foreign defendant can be sued in any  
3 district. In symbiosis, Federal Rule of Civil Procedure 4(k)(2) operates as the federal long-arm  
4 statute, and under that rule, jurisdiction is proper over the Defendants in the United States. Fed.  
5 R. Civ. P. 4(k)(2), permits federal courts to exercise personal jurisdiction over a defendant that  
6 lacks contacts with any single state if the complaint alleges federal claims and the defendant  
7 maintains sufficient contacts with the United States as a whole. *Getz v. Boeing Co.*, 654 F.3d  
8 852 (9th Cir. 2011). Under the law, jurisdiction lies within this district, unless the Defendants  
9 concede to jurisdiction in another state, which they declined to do.

10 In this case, the claims arise under federal law and the Defendants have extensive  
11 contacts with the United States (and purposely target the United States market). In light of the  
12 Defendants' motion and supporting declaration, it is impossible to make earnest arguments that  
13 the Nevada long-arm statute applies without the benefit of jurisdictional discovery.  
14 Nevertheless, jurisdiction is clearly proper under Fed. R. Civ. P. 4(k)(2), and thus, the Court can  
15 dispense with jurisdictional discovery and an analysis of the Nevada long-arm statute as long as  
16 the Federal long-arm Rule applies. It does; we should move on to the merits.

#### 17 I. INTRODUCTION AND FACTUAL BACKGROUND

18 Defendants are aliens (and alter egos of each other), purporting to operate outside the  
19 United States and outside of the jurisdiction of any Court in the United States of America.  
20 However, the Defendants have extensive beneficial business contacts in the United States, and  
21 choose to victimize multiple American companies by infringing on their copyrights. One of  
22 those companies is Liberty, a Nevada-based company.

23 Plaintiff's investigator viewed the Defendant's website in Nevada. Plaintiff's  
24 investigator viewed the unlawful redistribution of its works in Nevada. The investigator joined  
25 and created an account from Nevada, and confirmed with SunPorno.com support that SunPorno  
26 ships products to Nevada. The harm from the Defendants' unlawful activities is aimed at this

1 Nevada company, and the damage from the infringement on the site is felt in Nevada.<sup>1</sup> While  
2 the Defendant argues that it operates wholly extraterritorially, this is demonstrably false. The  
3 Defendants may have set up a corporation outside the United States, and since receiving notice  
4 of this dispute, moved their domain names offshore.<sup>2</sup> Nevertheless, the Defendant still maintains  
5 significant contacts with the United States, makes income from the United States, and causes  
6 damage from its unlawful activities in the United States.

7 Intellectual property piracy operations cannot be allowed to evade liability because they  
8 use a mail drop in the Seychelles while selling goods and services to Americans, contracting with  
9 Americans, advertising to Americans, and taking American money, with a business model built  
10 upon infringing the copyrights of American businesses. If they can, then this Court will create a  
11 legal wormhole permitting piracy operations to engage in their unlawful activities while evading  
12 justice simply by smirking at its victims from behind a transparent film of mail drops and post  
13 office boxes. The instant dispute involves a scheme that is specifically designed to steal from  
14 Americans and then to use the stolen wares to make its profits from Americans. If a foreign  
15 entity wants to steal from us, contract with us, sell goods and services to us, and amass our  
16 dollars, then it must face our courts when it runs afoul of our laws.

17 \\\

18 \\\

19 \\\

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21 \\\

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23

24 <sup>1</sup> This district has recently held analogously that, the District of Nevada, "has an interest in  
25 discouraging injuries that occur within its boundaries, including injuries resulting from patent  
infringement." *Elan Microelectronics Corp. v. Pixcir Microelectronics Co.*, 2012 U.S. Dist.  
LEXIS 19255, 19-20 (D. Nev. Feb. 16, 2012).

26 <sup>2</sup> They claim this was done for the sake of costs, however, Exhibits 18-19 demonstrate the minor  
27 difference in cost for the two different registrars. The price of a .com registration with Moniker  
is \$9.59; with EvoNames the price is \$8.25. See Exhibits 18-19. Therefore, the transfer saved  
28 the Defendants a whopping \$1.34.

1                    **II. THE COURT HAS JURISDICTION OVER THE DEFENDANT**

2            The Defendant devotes most of the motion on an irrelevant side-show<sup>3</sup> and arguing that  
3 the Nevada long-arm statute does not apply.<sup>4</sup> The Plaintiff acknowledges that the Defendant's  
4 declarations shift the burden for demonstrating jurisdiction on to the Plaintiff's shoulders.  
5 Without the benefit of jurisdictional discovery, the Plaintiff cannot fully completely refute the  
6 Defendant's arguments against the applicability of the Nevada long-arm statute. Nevertheless,  
7 jurisdiction is proper under Fed. R. Civ. P. 4(k)(2). Therefore, rather than belabor this Court  
8 with jurisdictional discovery disputes and inevitable motions to compel and motions for  
9 protective orders, the Plaintiff concedes that without jurisdictional discovery, it cannot meet its  
10 burden under the Nevada long-arm statute. If the Court wishes to save time, the Plaintiff  
11 concedes that without jurisdictional discovery to indicate to the contrary, the Nevada long-arm  
12 statute should not be the focus of the analysis, and the Court should concentrate on Fed. R. Civ.  
13 P. 4(k)(2).

14            If the Court wishes to get the simplest way to resolve the jurisdictional issue with the  
15 least amount of irrelevance and distraction, the Court should tear off the first thirteen pages of  
16 the Defendants' motion and focus on the real issue: Fed. R. Civ. P. 4(k)(2). Everything in the  
17

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18            <sup>3</sup> The side-show is a discussion of the previously filed Florida action. The Plaintiff initially filed  
19 in Florida, since the SunPorno.com domain name was physically present there at the time, and  
20 the Plaintiff worked to file where the court had jurisdiction over the domain name registration.  
21 The Florida court gave the Plaintiff 120 days to serve the Defendants. Since the Defendants  
22 evaded service and the 11th Circuit is not bound by *Rio Props., Inc. v. Rio Int'l Interlink*, 284  
23 F.3d 1007 (9th Cir. 2002), the Plaintiff was unable to comply, so the court dismissed the case  
24 without prejudice. The Defendant moved the domain name out of Florida, thus removing any  
25 reason to file there instead of in the Plaintiff's home jurisdiction. The Defendants point to this  
26 procedural history as if it were relevant. It is not. Had the Defendants returned a waiver of  
27 service, or had the Defendants accepted service, the case would have proceeded in Florida. Had  
28 they acknowledged that one of the six addresses Plaintiff had for the Defendants was correct,  
they may have been personally served. The Defendants declined to do so, and the Plaintiff  
(despite great efforts and expense, ECF 21-1, ECF 23, ECF 24) could not definitively find the  
Defendants to serve them. We are here now, as a result of that evasion. That evasive behavior  
should not be used by the Defendants as a shield.

<sup>4</sup> The Plaintiff has a good-faith belief that the Nevada long-arm statute would apply, but does not  
wish to waste party or judicial resources in conducting jurisdictional discovery to prove it, when  
the proper application of Fed. R. Civ. P. 4(k)(2) will achieve the exact same result.



1 first thirteen pages is irrelevant to the eventual order that this Court should issue. Under the  
2 Federal long-arm jurisdiction conferred by Rule 4(k)(2), jurisdiction is indisputable.

3 **A. A Foreign Defendant is Subject to Suit in any Judicial District**

4 Under 28 U.S.C § 1391(d), “[a]n alien may be sued in any district.” Fed. R. Civ. P.  
5 4(k)(2) provides for federal personal jurisdiction in cases such as this. Rule 4(k)(2) acts as a  
6 “federal long-arm statute.” *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30, 36 (1st Cir.  
7 1999); *Getz*, 654 F.3d 852.

8 The Advisory Committee Notes to Fed. R. Civ. P. 4(k)(2) explain the purpose of the  
9 Rule. This Rule was enacted to:

10 Correct the gap in the enforcement of federal law. Under the former rule,  
11 a problem was presented when the defendant was a non-resident of the  
12 United States sufficient to justify the application of United States law and  
13 to satisfy federal standards of forum selection, but having insufficient  
14 contact with any single state to support jurisdiction under state long-arm  
15 legislation or meet the requirements of the Fourteenth Amendment  
16 limitation on state court territorial jurisdiction. In such cases, the  
17 defendant was shielded from the enforcement of federal law by the  
18 fortuity of a favorable limitation on the power of state courts, which was  
19 incorporated into the federal practice by the former rule.

20 **B. Rule 4(k)(2) Applies to This Case**

21 As the United States Court of Appeals for the Fifth Circuit has explained:

22 Rule 4(k)(2) thus sanctions personal jurisdiction over foreign defendants  
23 for claims arising under *federal law* when the defendant has sufficient  
24 contacts with the nation as a whole to justify the imposition of United  
25 States law but without sufficient contacts to satisfy the due process  
26 concerns of the long-arm statute of any particular state.

27 *World Tanker Carriers Corp. v. MV & YA Mawlaya*, 99 F.3d 717, 720 (5th Cir. 1996). The 9<sup>th</sup>  
28 Circuit is in agreement. *Getz*, 654 F.3d at 858-859.

29 In *Elan Microelectronics Corp. v. Pixcir Microelectronics Co.*, 2011 U.S. Dist. LEXIS  
30 36640 (D Nev. Apr. 4, 2011), this court dealt with this very issue.

31 [P]ursuant to FRCP 4(k)(2), this Court may also exercise jurisdiction  
32 where a claim arises under federal law, the defendant does not have  
33 minimum contacts with any one state to support jurisdiction, but where its



1 contacts with United States as a whole are sufficient to meet the due  
2 process requirements. *Synthes*, 563 F.3d at 1293-94.

3 *Elan Microelectronics I*, 2011 U.S. Dist. LEXIS 36640 at \*3 (citing *Synthes (U.S.A.) v. GM Dos*  
4 *Ries Jr. Ind. Com. De Equip. Medico*, 563 F.3d 1285, 1293-94 (Fed. Cir. 2009)).

5 “Rule 4(k)(2), on the other hand, establishes jurisdiction over a defendant  
6 when process has been served and three requirements are met: ‘(1) the  
7 plaintiff’s claim arises under federal law, (2) the defendant is not subject to  
8 jurisdiction in any state’s courts of general jurisdiction, and (3) the  
9 exercise of jurisdiction comports with due process.’”

10 *Elan Microelectronics Corp. v. Pixcir Microelectronics Co.*, 2012 U.S. Dist. LEXIS 19255 at\*6  
11 (D Nev. Feb. 16, 2012) (citing *Synthes*, 563 F.3d at 1294).

12 **1. The Plaintiff’s Claims Arise Under Federal Law**

13 The analysis under the first prong is simple: This case is a copyright infringement case,  
14 thus it arises under federal law. Copyright is governed by title 17 of the U.S. Code, and federal  
15 courts have exclusive jurisdiction over copyright cases. 28 U.S.C. §1338(a).

16 **2. The Defendants are Beyond the Reach of Any State Court of General**  
17 **Jurisdiction**

18 The second prong is less simple. While the Plaintiff does not concede that no facts will  
19 ever reveal that the Defendants are beyond the reach of the Nevada long-arm statute, the Plaintiff  
20 concedes this point prior to jurisdictional discovery to facilitate the 4(k)(2) analysis, because  
21 whether the Nevada long-arm statute applies or 4(k)(2) applies, the result will be the same – this  
22 Court must assert jurisdiction over the Defendants.

23 Had the Defendant acknowledged Rule 4(k)(2)’s applicability, it may have presented  
24 arguments relevant to whether jurisdiction is proper in another state. Under Fed. R. Civ. P.  
25 4(k)(2), a foreign defendant has the privilege of conceding jurisdiction in an alternate state and  
26 then the plaintiff bears the burden of supporting its chosen forum. Had the Defendants conceded  
27 that jurisdiction would be proper in Maine, North Dakota, or Hawaii, the Plaintiff would bear a  
28 burden that could only be overcome after jurisdictional discovery. Since the Defendants  
declined to do so, the Defense waived its ability to concede jurisdiction in another state, and  
chose the “all the marbles” approach by arguing that no U.S. Court could claim jurisdiction.

1 Thus, if the Plaintiff can show that jurisdiction is proper in the United States under Rule 4(k)(2),  
2 then the Plaintiff's choice of forum prevails, and here we litigate the merits.

3 At this time, the Plaintiff is not privy to information that would satisfy it (much less the  
4 Court) that any other alternate state could indisputably exercise jurisdiction over the  
5 Defendants.<sup>5</sup> However, the Plaintiff does not bear that burden under Rule 4(k)(2). If the  
6 defendant challenges jurisdiction in the forum state and declines to identify any other where suit  
7 is possible, then the federal court asserts jurisdiction under Rule 4(k)(2). *ISI Int'l, Inc. v. Borden*  
8 *Ladner Gervais LLP*, 256 F.3d 548, 552 (7th Cir. 2001) ("[A] piecemeal analysis of the  
9 existence *vel non* of jurisdiction in all fifty states is not necessary. Rather, so long as a defendant  
10 does not concede to jurisdiction in another state, a court may use 4(k)(2) to confer jurisdiction.");  
11 see also *Silver Ring Splint Co. v. Digispint, Inc.*, 2007 U.S. Dist. LEXIS 25522 (W.D. Va. Apr.  
12 5, 2007) ("Defendant knows very well what activities it has conducted in the other 49 states, and  
13 deliberate coyness as to these activities is not a justification for denying jurisdiction here.  
14 Accordingly, the burden is more properly placed on Defendant to come forward with evidence  
15 that another forum would be correct."); *Steven Henry Adams v. Unione Mediterranea Di Sicurtà*,  
16 364 F.3d 646, 651 (5th Cir. 2004).

17 The Defendant has declined to suggest an alternate forum, let alone come forward with  
18 evidence that another one of the 49 states is more appropriate. Therefore the second prong of  
19 Rule 4(k)(2) is satisfied. Given that the portions of Rule 4(k)(2) which act analogously to a long-  
20 arm statute are resolved in favor of this Court asserting jurisdiction, we must simply turn to the  
21 question of whether it would offend due process to say that jurisdiction in the United States is  
22 improper.

23 The Defendants claim to have insufficient contacts with Nevada, meanwhile spreading  
24 out their United States contacts over multiple states, leaving no single state as a clear nexus of  
25 American activity. The following table shows the United States contacts discovered by the  
26 Plaintiff to date:

27 \_\_\_\_\_

28 <sup>5</sup> In fact, if the Plaintiff had such information, it would have filed suit there.

Connection to U.S.	District	ECF/Exhibit
Previous Server Location	S.D. Ohio	ECF 1-15
Current Server Location	E.D. Virginia	Exhibit 6, ECF 16 at FN 2, ECF 16-1
Original Registrar for SunPorno.com	S.D. Florida, Oregon, C.D. California	ECF 1-11, ECF 1-12
Previous DMCA Agent	M.D. Florida	Exhibit 20
Current DMCA Agent	S.D. Florida	Exhibit 7
Targeted Advertising	Nevada	Exhibit 15, Exhibit 16
SunPorno Store	Nevada	Exhibit 17
Damages Felt by Plaintiff	Nevada	ECF 1
SunPorno Ships Products from L.A.	C.D. California	Exhibit 17
SunPorno Registration Uses U.S. States and Zip Codes	Nationwide	Exhibit 8
Over 3 million U.S. Visitors in June 2012	Nationwide	Exhibit 2
17.9 % of Traffic is U.S.-based (most from any single country)	Nationwide	Exhibit 4
Ideal Consult websites saw nearly 6.5 million U.S. hits in June 2012	Nationwide	Exhibit 5
U.S. is "good country" for traffic	Nationwide	Exhibit 14
SunPorno.com is in U.S. English	Nationwide	ECFs 1-1, 1-5 to 1-10, 1-17 to 1-19, 1-22, 1-23 and 1-27; Exhibits 1, 7-10, and 15-17
Advertisements use U.S. Measurements	Nationwide	ECF 1-6, ECF 1-7
Advertisements use U.S. Actors	Nationwide	ECF 1-5, ECF 1-8, ECF 1-9

With ties to multiple states across the country and multiple ties to the nation as a whole that are not state specific, where should the Defendants be pursued if not in the jurisdiction that is the home of the party whose rights they willfully violated? *Righthaven LLC v. South Coast Partners, Inc.*, 2011 U.S. Dist. LEXIS 12802,\*4 (D. Nev. Feb. 5, 2011) ("[T]his court remains bound by its express holding that where the defendant 'willfully infringed copyrights owned by [the plaintiff], which, as [the defendant] knew, had its principal place of business in the [forum],' '[t]his fact alone is sufficient to satisfy' the Calder effects test."); *Righthaven, LLC v. Va. Citizens Def. League, Inc.*, 2011 U.S. Dist. LEXIS 67659, \*9-10 (D. Nev. June 23, 2011). Thus, jurisdiction is proper.

1        **3. Jurisdiction in the United States Would Not Offend Due Process Because the**  
2        **Defendants Have Extensive Contacts with the United States**

3        It is important that the Court recognize the breadth of the due process analysis. Under  
4        Rule 4(k)(2), the Court does not ask whether due process would be offended if jurisdiction were  
5        asserted in the state, but rather whether due process tolerates the suit in the United States as a  
6        whole. “Under Rule 4(k)(2), the constitutional requirements are the same as with any other  
7        personal jurisdiction inquiry, i.e., relatedness, purposeful availment, and reasonableness. They  
8        are simply applied as to the United States as a whole, rather than a particular state.” *ISI Int’l,*  
9        *Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 552 (7th Cir. 2001).

10        The defendant’s national contacts take center stage because the rule  
11        applies only to situations in which federal courts draw jurisdictional  
12        authority from the federal sovereign (unreinforced by ‘borrowed’ state  
13        statutes), and, thus, the applicable constitutional requirements devolve  
14        from the Fifth rather than the Fourteenth Amendment.

15        *World Tanker Carriers Corp.*, 99 F.3d at 720.

16        First of all, let us not forget that the Defendants are alleged to have committed an  
17        intentional tort, namely copyright infringement. Complaint ¶ 1. They did so by infringing upon  
18        copyrights owned by the Plaintiff, which it had to know were created by an American entity.  
19        Complaint ¶ 93. As this very Court held:

20        “Ultimately, unless and until the Ninth Circuit overrules *Columbia*  
21        *Pictures*, this court remains bound by its express holding that where the  
22        defendant ‘willfully infringed copyrights owned by [the plaintiff], which,  
23        as [the defendant] knew, had its principal place of business in the [forum],’  
24        ‘[t]his fact alone is sufficient to satisfy’ the *Calder* effects test.”

25        *South Coast Partners, Inc.*, 2011 U.S. Dist. LEXIS 12802 at \*4 (citations omitted). See also *Va.*  
26        *Citizens Def. League, Inc.*, 2011 U.S. Dist. LEXIS 67659 at \* 9-10 (“This Court agrees with a  
27        recent district court case which stated that ‘unless and until the Ninth Circuit overrules *Columbia*  
28        *Pictures*, this court remains bound by its express holding.’”) (citing *South Coast Partners*). By  
29        this reasoning alone, the Court should rule that jurisdiction is proper. However, even in the

1 absence of this clear rule, the Defendants would still be subject to jurisdiction in the United  
2 States under Rule 4(k)(2).

3 The Defendants have such pervasive and systematic economic ties to the United States  
4 there is no doubt that they are subject to jurisdiction in the United States. Given the Defendants  
5 extensive contacts with the United States, they cannot seriously argue that they lack minimum  
6 contacts with the forum nation, or that they could not reasonably anticipate being haled into  
7 court in the United States. Indeed, these Defendants have already been sued in the United States  
8 for copyright infringement. See *FraserSide IP LLC v. Letyagin et al.*, Civil Case no. 11-cv-  
9 03041 (N.D. Iowa 2011). Thereafter, they continued to infringe upon the Plaintiff's copyrights.  
10 See Exhibit 1 (infringements that the Plaintiff found after the Complaint had been filed). This  
11 would seem to eliminate any claim by the Defendants that they could not reasonably anticipate  
12 being sued in the United States. Of course, even if these defendants were not already litigating  
13 in the United States, they still engage in so much commerce with the United States that Due  
14 Process would not be so much as mildly uncomfortable, let alone offended, by the exercise of  
15 jurisdiction over these Defendants.

16 The SunPorno.com website was visited by more than 3,035,500 unique American internet  
17 users in June of 2012. Exhibit 2. A full 17.9% of SunPorno.com's traffic comes from the  
18 United States. Exhibit 4. Of course, the Defendant may respond that "only" 17.9% of its traffic  
19 is American, but the United States represents (by far) its largest market.<sup>6</sup> *Id.* More than three  
20 million Americans per month engage in an interactive transaction with the sunporno.com  
21 website. The Defense can not seriously contend that it can serve more than three million  
22 Americans per month, yet it would offend Due Process for it to be compelled to answer for  
23 unlawful actions in the United States.

24 While the number of Nevada visitors to the site is irrelevant to the Rule 4(k)(2) analysis,  
25 the Plaintiff is confident that a significant number of sunporno.com's visitors are Nevadans.

26  
27 <sup>6</sup> By comparison, its second largest market is Germany with 10.2%, followed by India with  
28 8.2%. Accordingly, its next two markets combined are about equal to its American market.  
Italy, Japan, and Great Britain follow with 5.2%, 4%, and 3.4%, respectively. Exhibit 4.



1 However, this can only be truly ascertained through discovery. As a matter of statistics, it is  
2 more likely than not that 26,712 Nevadans visit sunporno.com every month<sup>7</sup>. Meanwhile, all of  
3 the infringements claimed in the Complaint were viewed and documented from Liberty's Las  
4 Vegas, Nevada offices. Therefore, even the Nevada long-arm statute would seem to be satisfied  
5 by such a number – especially so in light of the Court's rulings in *South Coast Partners* and *Va.*  
6 *Citizens Def. League*.

7 To add to the weight of the Plaintiff's position, these numbers only apply to one of the  
8 Defendants' websites. The Defendants operate a virtual horde of websites. ECFs 1-13 and 1-14  
9 are lists of the other known websites the Defendants operate. The Defendants operate at least  
10 1,150 other websites, which received traffic from at least 6,478,455 Americans in the month of  
11 June 2012 alone.<sup>8</sup> The Defendants enter into millions of transactions with Americans every  
12 month. The fact is that the United States of America represents the Defendants' largest market –  
13 and the Defendants do business with more Americans per month than the entire population of at  
14 least 35 states.<sup>9</sup>

15 In addition, the Defendants regularly engage in contracts and other business transactions  
16 with Americans – aside from the 6.5 million Americans it caters to per month. Letyagin  
17 originally registered the domain name sunporno.com with a Florida address (ECF 1-11); the  
18 domain name was registered with full knowledge that the domain name registrar was an  
19 American company (ECF 1-12, showing Moniker with its addresses in Portland, OR, Los  
20 Angeles, CA, and Pompano Beach, FL); the SunPorno.com website was hosted in Ohio (ECF 1-  
21 15) and is now hosted in Virginia (Exhibit 6, ECF 16 at FN 2, ECF 16-1 ¶ 11); the largest  
22 number of customers are from the United States (Exhibit 4); and its terms and conditions were

23  
24 <sup>7</sup> Nevada's population of 2,733,322 is .88% of the United States population of 311,591,917. If  
25 we assume that each state in the United States is represented in the SunPorno traffic  
proportionally to their population, 26,712 Nevada residents visit the website monthly.

26 <sup>8</sup> This number has been determined by utilizing the traffic reporting at Compete.com and only  
27 including the results for websites receiving over 20,000 unique American visitors. See Exhibit  
5; Declaration of Henry Leonard.

28 <sup>9</sup> As of the 2010 census, 35 states had populations under 6.4 million. See  
<http://www.census.gov/popfinder/>, last accessed on July 19, 2012.

1 entirely in not only English, but American English (ECF 1-22; Exhibit 7). Now, remember the  
2 1,150 other domains? They, too, were registered in the United States until the Defendants  
3 moved them offshore, presumably to impede any eventual collection efforts.<sup>10</sup> Furthermore, on  
4 information and belief, the Defendants have engaged in business transactions with the company  
5 LaTouraine Inc., which does business as Naughty America, a California company.<sup>11</sup>

6 SunPorno.com displays advertisements featuring an American actor, Ron Jeremy. ECF  
7 1-6; 1-7. Presumably the ad is authorized by Mr. Jeremy. Other ads clearly target Americans,  
8 such as advertisements for penis enlargement, which use inches – not centimeters. ECF 1-5; 1-8;  
9 1-9. The website's signup form clearly and unequivocally targets United States residents. It has  
10 drop down menus thereupon which are pre-populated with United States as the member's  
11 country of origin and a space to fill in U.S. zip codes. ECF 1-23. Furthermore, at the time of  
12 this dispute arising, every page on SunPorno.com displayed an American flag in the upper-right  
13 hand corner of the page to select English – not the Union Jack. ECFs 1-5 through 1-10; 1-27. Its  
14 terms of use clearly show a Florida based agent for service of copyright complaints, Constantin  
15 Luchian, in Fort Lauderdale, Florida. Exhibit 7. When a user opts to sign up for a premium  
16 membership on SunPorno.com, they are directed to a website that links to terms and conditions  
17 of membership that clearly targets Americans. ECF 1-22. These terms and conditions go so far  
18 as to explicitly list the American states in which the minimum age for majority is 21 and list

19  
20 <sup>10</sup> The Defendants claim that this was a simple cost-saving measure. However, it certainly came  
21 at a suspicious time – the largest transfer was on September 28, 2011 (ECF 1-15) – two days  
22 after the Plaintiff filed the complaint in the Florida action, casting doubt upon the Defendants'  
23 claim that this was a coincidental cost-saving measure. The price of a .com registration with  
24 Moniker is \$9.59; with EvoNames the price is \$8.25. See Exhibits 18-19. Therefore, moving  
25 SunPorno.com from Moniker to EvoNames saved them \$1.34 per year. Even calculating every  
26 domain name they have (1,150 of them), this shift – coming immediately upon notification of the  
27 dispute – saved no more than \$1,541. Meanwhile, the Defendants have likely spent more than  
28 that just trying to explain the shift. Furthermore, the Plaintiff is aware that Moniker often grants  
discounts to its larger customers. Discovery may eventually show that there was no cost savings  
at all.

<sup>11</sup> This is provided on information and belief, with the inadmissible information coming from a  
reliable source. If the Court is unpersuaded that 4(k)(2) is satisfied, but evidence of the  
Defendant's dealings with La Touraine, Inc. could change the Court's mind, the Court should  
permit jurisdictional discovery on the issue.



1 them by their United States postal abbreviations: "AL, MS, NE, WY". *Id.* at 2. Further, these  
2 terms explicitly state that the user represents and warrants that they "have not notified any  
3 governmental agency, including the U.S. Postal Service, that [they] do not wish to receive  
4 sexually oriented material." (emphasis added) *Id.* at 2. The site then goes on to link to a list of  
5 restricted zip codes from the United States. *Id.* at 3. Does this sound like a company that does  
6 not foresee being haled into an American Court?<sup>12</sup>

7 Defendant's claimed location in The Republic of Seychelles is nothing more than a post  
8 office box containing a shell company created for the purpose of evading authority. This entity  
9 that admits its primary business is "porno" expects this Court to believe that it chose to locate in  
10 a nation where pornography is legally prohibited? See  
11 [http://www.thecommonwealth.org/Internal/139213/179921/traveller\\_information/](http://www.thecommonwealth.org/Internal/139213/179921/traveller_information/), last accessed  
12 on July 16, 2012. Given this fact, the Plaintiff would not even have the ability to vindicate its  
13 rights in a Seychellois court – as it would be akin to an American Plaintiff suing in an American  
14 court to enforce a contract for the sale of cocaine. Given the location of Seychelles, in the  
15 middle of the Indian Ocean, its miniscule population<sup>13</sup>, and the fact that pornography is banned  
16 there, it is likely that Defendant and all persons related to Defendant website have never resided  
17 in nor even visited the Seychelles. Letyagin claims he and the entity Ideal Consult Ltd. did not  
18 do lots of things in Nevada or the United States, (have employees, own real estate, pay taxes, and  
19 have a bank account); it is quite certain they did not do those things in the Seychelles either.

20 Defendants assert by affidavit that SunPorno.com does not itself offer premium  
21 membership, because once a person clicks on the "premium membership" button, they are sent to  
22 a website which Defendants did not control and could not control. This is largely unbelievable  
23

24 <sup>12</sup> This program was previously linked to through the FAQ and on pages displaying videos. The  
25 links were deleted once the Plaintiff made it clear that they were evidence of United States  
26 jurisdiction being proper, but the program remains active at [www.sunporno.com/premium.php](http://www.sunporno.com/premium.php),  
27 last accessed on July 17, 2012.

28 <sup>13</sup> The World Bank currently reports a population of 87,972 for the Seychelles. See  
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SEYCHELLESE/XTN/0,menuPK:367513~pagePK:141159~piPK:141110~theSitePK:367495,00.html>, last  
accessed July 17, 2012.

1 and legally irrelevant. See *South Coast Partners*, 2011 U.S. Dist. LEXIS 12802 at \*13-14  
2 (despite the dispute being based around a passive website, jurisdiction was still proper) (citing  
3 *Brayton Purcell LLP v. Recordon & Recordon*, 361 F. Supp. 2d 1135, 1143 (N.D. Cal. 2005)).  
4 The FAQ page on SunPorno.com clearly indicated that viewers could obtain the high definition  
5 videos by signing up for premium membership. ECF 1-10. It also contained (and still contains)  
6 information on what to do if a copyrighted video is found on SunPorno – it permits a report to  
7 SunPorno about the abuse. ECF 1-10, **Exhibit 7**. This report goes to a UPS store in Fort  
8 Lauderdale. **Exhibit 7**. For the Defendants to claim that the United States is of no importance to  
9 their business stretched credibility to the point that it snaps.

10 Plaintiff provides the screen shots of the sequence a user goes through to join as a  
11 premium member. The exhibit shows that the person is directed to a website page on  
12 SunPorno.com: “Sunporno.com/premium.php.”<sup>14</sup> This series of screen shots follows the steps  
13 that the surfer takes to join the SunPorno premium membership site. **Exhibit 8**. At the bottom  
14 of that premium sign up page are links for Terms of Service, DMCA statement, and 2257  
15 Compliance notice that all go to webpages that begin with “www.sunporno.com.” **Exhibit 7**  
16 (Terms and Conditions), **Exhibit 9** (DMCA Statement), **Exhibit 10** (2257 Statement).  
17 Defendant’s affidavit thus appears to be wildly inaccurate. However, even if the premium  
18 membership sign up did send a person to another website, this would not relieve Defendants of  
19 liability or deprive the court of jurisdiction. An owner has complete control over what is shown  
20 on its website. SunPorno set up the premium membership, and if in fact this means that  
21 SunPorno is sending surfers to join other websites, SunPorno still derives a financial benefit  
22 from this service and engages in a contract with these sites for its American traffic and revenue.  
23 The referral to another site is not done out of altruism. It is done for compensation, and the  
24 reason the internet surfer has gotten that far is due to the stolen content appearing on Defendant’s  
25 website, and the Defendants’ commercial interests.

26  
27  
28 <sup>14</sup> While the Defendants have now removed this information from the FAQ, this premium page  
was still active the morning of July 17, 2012.

1 Defendant also claims that it has no control over the advertising on its own website.  
2 Evidence should not be necessary to cast doubt upon this wild assertion, but some will be  
3 provided anyway. The Defendant claims that advertising on the site is sold by a 3<sup>rd</sup> party –  
4 Exoclick. No evidence is provided, but let us take the Defendants at their word. Advertising  
5 might be sold by Exoclick, but Defendant's affidavit does not say all advertising is sold by  
6 Exoclick. Accepting, *arguendo*, that Exoclick is what the Defendants say it is, and it does what  
7 the Defendants say it does, the links directly from SunPorno.com for potential advertisers leads  
8 us to the "TGP Alliance" website. **Exhibit 11.** At the bottom right corner of the Sunporno  
9 webpage is a link that says, "Advertise". This link goes directly to the webpage  
10 TGPAlliance.com where it provides details of advertising opportunities on SunPorno.com.  
11 **Exhibit 11.** Why would Defendant infer that ExoClick sells all the advertising on  
12 SunPorno.com if the link directly from SunPorno.com for advertisers leads to TGP Alliance?  
13 (and TGP Alliance is owned by the same Defendants). See **Exhibit 13.**

14 The TGP Alliance website claims "TGP Alliance owns and operates over 50 free adult  
15 sites, running over 3,500,000 unique hit per day." See **Exhibit 11.** Then, the TGP Alliance lists  
16 its websites, with SunPorno listed as one of its "gold" websites. **Exhibit 12.** Given the common  
17 ownership, how can the Defendants claim that they do not control any of their own advertising?

18 Although Defendants claim that they have no say in the advertising on their own  
19 property, it is absurd to think the Defendants do not control the advertising on their own website,  
20 and the declaration of the Defendant is most suspect. Readily available public information lays  
21 these claims bare.

22 On the TGP Alliance network website, advertisers are solicited to pay for ad placement  
23 on TGP Alliance network sites. **Exhibit 12.** When an advertiser desires to purchase advertising,  
24 that advertiser is directed to "Purchase Spots" at [tgpalliance.com/purchase.html](http://tgpalliance.com/purchase.html). On that page,  
25 under the option EPASSPORTE (a Los Angeles based company), the potential advertiser is  
26 instructed to "Send the amount of money you wish to deposit to Epassporte account  
27 latouraine\_sergej specifying the following info in comments....". **Exhibit 13.** This account  
28 ownership, assumed to be in the same Sergej who is a named defendant here, can only be

1 confirmed through the discovery process. When you make a payment to this Los Angeles based  
2 company (Declaration of Marc J. Randazza), the money goes into an account that, more likely  
3 than not, belongs to Mr. Letyagin.

4 The Plaintiff will indulge, if the Court would like more. The Defendants solicit internet  
5 salespeople to send surfers, or "traffic" the Defendants websites. The first listed "good country"  
6 is the United States. **Exhibit 14.** The list is not alphabetical, nor does it appear to be random.  
7 The Defendants know that the United States is their most lucrative market and demonstrably  
8 target this market. If the Defendant is offering to pay for American traffic, how can it seriously  
9 contend that it is not aiming its conduct at the United States? Defendants' premium membership  
10 permits payment in U.S. dollars, and is thus targeted to United States citizens. Complaint ¶ 75.  
11 SunPorno also invokes U.S. trademark and copyright laws in its terms of service. **Exhibit 7.**  
12 The connections to the United States simply go on and on and on, the more you look, even  
13 without the benefit of jurisdictional discovery.

14 Defendants have knowledge of the value of Plaintiff's copyrighted works. The  
15 Defendants also know that they can make serious profits by selling services that are completely  
16 derived from copyright infringement. Defendants' infringement of Liberty's copyrights is aimed  
17 at Plaintiff, who is located in Nevada, thus independently justifying the exercise of jurisdiction.  
18 *South Coast Partners*, 2011 U.S. Dist. LEXIS 12802 at \*4; *Va. Citizens Def. League*, 2011 U.S.  
19 Dist. LEXIS 67659 at \*9-10. For the same reason, the infringement is aimed at harming Plaintiff  
20 in its business, and Defendant knew and knows that Plaintiff is an American company located in  
21 Nevada and was aware that Defendants' infringing activities would cause Americans to suffer  
22 harm. Even if Defendant did not know the Plaintiff was a Nevada company, Defendant knew  
23 that it was infringing on *somebody's* content and that content obviously came from the United  
24 States. Complaint ¶ 64; see also *South Coast Partners*, 2011 U.S. Dist. LEXIS 12802 at \*4; *Va.*  
25 *Citizens Def. League*, 2011 U.S. Dist. LEXIS 67659 at \*9-10.

26 By now, the Court should have been well satisfied that Fed. R. Civ. P. 4(k)(2) and the due  
27 process clause are satisfied. However, the Plaintiff will continue just in case the Court feels that  
28 a little more will help: The Defendants' website contains geographically targeted advertising that

1 specifically targets Americans. When a person in Nevada logs on to the website, that Nevada  
2 resident is served with ads specific to his/her location a pop-up ad appears. Recently, a Liberty  
3 employec logged on to the SunPorno website to have a pop-up advertise "LIVE from Las  
4 Vegas." The Liberty office is located in Las Vegas, Nevada. **Exhibit 15.** Another screen grab  
5 shows an advertisement where "extrasensually" remarked "im in Las Vegas." **Exhibit 16.**  
6 Furthermore, a customer support person from the SunPorno.com store confirmed that all  
7 materials in the online store could be shipped to Las Vegas and that the store's headquarters was  
8 in Los Angeles. **Exhibit 17.** Clearly, Defendants are targeting, engaging, and profiting from  
9 Nevada residents with its website. If the Defendants can sense that surfers are coming from the  
10 United States, then the Defendants could have chosen to simply "geo block" Americans and/or  
11 Nevadans. Instead, Defendants chose to specifically target, expressly aim, at the wallets of  
12 Nevadans and Americans alike.

13 Strangely enough, for a party claiming that he should be immune from suit in the United  
14 States, Letyagin seemed to eschew doing business with foreign registrars and hosting companies  
15 in favor of U.S.-based companies (until this dispute erupted). The Defendants not only do  
16 significant business in the United States, but seem to prefer the benefit of doing business here. It  
17 is clear that SunPorno actively participates in the United States market.

18 **C. Purposeful Availment**

19 None of the above contacts with the United States are merely fortuitous. The Defendants  
20 expressly aimed at this market, and darn well hit their target – 6.5 million times per month. The  
21 Defendants successfully cultivated the United States market for advertisers and visitors. The  
22 SunPorno website itself is highly interactive and none of its contacts with the United States are  
23 mere happenstance.

24 Tube sites like SunPorno.com are highly interactive. Federal law defines an "interactive  
25 computer service" as "any information service, system, or access software provider that provides  
26 or enables computer access by multiple users to a computer server." 47 U.S.C. § 230(f)(2); see  
27 *Carafano v. Metrosplash.com, Inc.*, 207 F. Supp. 2d 1055, 1065-66 (C.D. Cal. 2002) (an online  
28 dating website is an "interactive computer service" under the CDA). In fact, if this were not an



1 intellectual property case, Section 230 would immunize SunPorno from suit, given its status as  
2 an interactive website. Clearly under *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, SunPorno is at the  
3 most interactive end of the spectrum. 952 F. Supp. 1119 (W.D. Pa 1997). In fact, if the  
4 Defendants wish to claim that SunPorno is not interactive, this would be laughable. However, if  
5 the Court were blinded by its laughter and agreed, then Section 230 does not apply, and thus the  
6 Plaintiff would have a laundry list of additional claims to add to an amended complaint.

7 SunPorno.com operated as a highly interactive website in the following ways (See  
8 generally Declaration of Erika Dillon, hereinafter "Dillon Decl."). First and foremost, as a "tube  
9 site," the site does nothing unless and until a viewer presses "play" on the particular video. Of  
10 the 6 movies currently at issue (more will be added to an Amended Complaint), users viewed  
11 them over 172,000 times. These interactions alone led us to this dispute and the Plaintiff's  
12 claimed actual damages. Additional, the Plaintiff's investigator determined:

13 1) SunPorno required users to sign up or register in order to fully utilize the  
14 site. See Dillon Decl. ¶ 5.

15 2) SunPorno allowed users to create their own individual usernames. See  
16 Dillon Decl. ¶ 6.

17 3) SunPorno allowed users to share specific information on a user-created  
18 profile. See Dillon Decl. ¶ 8.

19 4) SunPorno profiles could contain a multitude of personal information,  
20 including name and a profile picture. See Dillon Decl. ¶ 7-8.

21 5) SunPorno allowed users to upload their own videos to the SunPorno  
22 network. See Dillon Decl. ¶ 10.

23 6) SunPorno allowed users to add in specific descriptions of the videos they  
24 uploaded. See Dillon Decl. ¶ 11.

25 7) SunPorno allowed users to rate videos. See Dillon Decl. ¶ 12.

26 8) SunPorno allowed users to comment on videos. See Dillon Decl. ¶ 12.

27 9) SunPorno allowed users to add videos to a list of favorites. See Dillon  
28 Decl. ¶ 12.

1           10) SunPorno allowed users to save videos for later viewing. See Dillon Decl.  
2     ¶ 5.

3           11) SunPorno allowed users to “friend” other SunPorno members in order to  
4     further interact with each other. See Dillon Decl. ¶ 13.

5           12) SunPorno allows users to send private messages to other SunPorno  
6     members. See Dillon Decl. ¶ 13.

7           13) SunPorno allowed users to copy and paste the code for any video and  
8     place this video on a separate website in an embeddable player. See Dillon Decl. ¶ 14.

9           14) SunPorno allowed users to purchase items through the “Store.” See Dillon  
10    Decl. ¶ 18.

11          15) SunPorno allowed users to search for videos based on keywords. See  
12    Dillon Decl. ¶ 15.

13          16) SunPorno allowed users to search to interact and exchange pictures with  
14    other users in their “community.” See Dillon Decl. ¶ 16.

15          17) SunPorno allowed users to watch specific channels. See Dillon Decl. ¶ 15.

16          18) SunPorno allowed users connect via live video chats on the “live cams”  
17    page located at sunpornochat.com. See Dillon Decl. ¶ 17.

18    It doesn’t get much more interactive than that.

19    Given that Letyagin’s contacts with the United States are so pervasive, consistent, and  
20    numerous, and that the SunPorno website was so highly interactive, his only remaining argument  
21    against jurisdiction seems to be that he resides so far away from the forum that it would be  
22    burdensome to travel to Las Vegas.

23           **III. IN THE ALTERNATIVE, PLAINTIFF REQUESTS LEAVE**  
24           **TO CONDUCT JURISDICTIONAL DISCOVERY**

25    If Defendants continues to maintain its position that personal jurisdiction is improper and  
26    the Court is remotely concerned that there is any question, the Plaintiff requests leave to conduct  
27    jurisdictional discovery of and to conduct an evidentiary hearing. See *Dean v. Motel 6*  
28    *Operating L.P.*, 134 F.3d 1269, 1271-72 (6th Cir. 1998). It would seem that such an exercise



1 would be an unnecessary waste of resources, given the overwhelming factual and legal support  
2 for the maintenance of jurisdiction under Rule 4(k)(2), but the Plaintiff requests this in the  
3 alternative.

#### 4 IV. CONCLUSION

5 Piracy of copyrighted works is not new to the entertainment field. Music, movies, videos  
6 and books have been copied and distributed without authorization or compensation to the rightful  
7 owner for as long as creative people have memorialized their ideas on paper. In the past, copies  
8 were easier to spot and distribution of unauthorized works more difficult. With the advent of the  
9 Internet and the ability to replicate digital files *ad infinitum*, the ease of pirating copyrighted  
10 material has contributed to the explosion of unauthorized material. The global reach of the  
11 Internet allows website operators to hide behind borders, fictional names or outdated addresses,  
12 thwarting attempts to seek compensation for the unauthorized use of copyrighted content.  
13 Traditional geographic borders have no meaning on the Internet, further compounding the  
14 difficulty facing legitimate copyright owners attempting to enforce their rights against  
15 unauthorized users. Legitimate copyright owners face a steep hill to enforce their rights when  
16 their works can be replicated at lightning speed by far away entities, only to be sold back to the  
17 legitimate owner's customers in its home market and the pirates claim immunity from  
18 prosecution. Plaintiff, a legitimate Las Vegas based company with full ownership of United  
19 States copyrights, documented numerous infringements of its works from its Las Vegas location.  
20 The SunPorno.com website contains advertising directly targeted at Nevada residents and  
21 interacts directly with Nevada residents, competing with Plaintiff for customers by selling  
22 Plaintiff's own works.

23 Defendants argue that claims for infringement of U.S. copyrights, rightfully owned by a  
24 Nevada company, and infringed upon to produce income from Internet users and advertisers in  
25 the U.S., may not be litigated in the United States. Defendants targeted American works,  
26 American users, and American dollars. The Defendants targeted Nevada internet users and  
27 United States advertisers, infringed upon the copyrights of a Nevada company, are properly and  
28 fairly under the jurisdiction of this Court. The due process requirements for Defendant to be

1 haled into this court have been met. Since the Defendants have declined to stipulate to an  
2 alternative U.S. forum, the Plaintiffs choice, its home forum, prevails. The case should remain  
3 here.

4  
5 Dated: July 19, 2012

Respectfully Submitted,

s/Marc J. Randazza

Marc J. Randazza, Esq., (12265)

mjr@randazza.com

Ronald D. Green, Esq., (7360)

rdg@randazza.com

Randazza Legal Group

6525 W. Warm Springs Rd., Suite 100

Las Vegas, NV 89118

(888) 667-1113

(305) 437-7662 fax

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed using this Court's CM/ECF system  
on July 19, 2012.

Dated: July 19, 2012

Respectfully Submitted,

s/Marc J. Randazza

Marc J. Randazza, Esq., (12265)

mjr@randazza.com

Ronald D. Green, Esq., (7360)

rdg@randazza.com

Randazza Legal Group

6525 W. Warm Springs Rd., Suite 100

Las Vegas, NV 89118

(888) 667-1113

(305) 437-7662 fax